10027

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 101.

DANIEL CRONIN, PLAINTIFF IN ERROR,

v.

THE CITY OF DENVER, DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

Section 20 of the charter of the city of Denver defines the powers of the city council and, in part, reads as follows:

> "Except as otherwise provided in this act, the city council shall have the management and control of the city finances, and all property of the corporation, real, personal and mixed, and power by ordinance: * * * Exclusively to provide for the licensing, taxing and regulating of tippling houses, dram shops, billiard tables and bowling alleys; and the selling or giving away of any intoxicating or malt liquors by any person within the city, and to tax and regulate the same; provided, * * *.

"5th. That no liquor saloon, dram shop or tippling house shall have or keep in connection with or as part of such saloon, tippling house or dram shop, any wine room or other place, either with or without doors, curtain or curtains, or screen of any kind, into which any female person shall be permitted to enter from the outside, or from such tippling house or dram shop, and there be supplied with any kind of liquor whatsoever."

In pursuance of the authority by said section of the charter conferred, the council of the city of Denver enacted an ordinance known as ordinance No. 101 of the series of 1898, which may be found in the Compiled Ordinances of the city of Denver, from section 733 to section 763, inclusive. Section 745 thereof is as follows:

"Each and every liquor saloon, dram shop or tippling house keeper, licensed under the provisions of this article, who shall, by himself or his agent, clerk or servant, permit any gambling or riotous or disorderly, indecent or offensive conduct in or about his place of business or premises, or who shall have or keep in connection with or as part of such liquor saloon, dram shop or tippling house, any wine room or other place, either with or without door or doors, curtain or curtains, or screen of any kind, into which any female person shall be permitted to enter from the outside, or from such liquor saloon, dram shop or tippling house, and there be supplied with any kind of liquor whatsoever, shall, upon conviction, be fined as hereinafter provided."

Section 746 is as follows:

"No person, whether as principal, clerk, agent or servant, having charge or control of any liquor saloon, dram shop or tippling house, or place where intoxicating or malt liquors are sold or given away, or any place adjacent thereto, or connected therewith in any manner whatsoever, either by doors or otherwise, shall

suffer or permit any female person to be or remain in such liquor saloon, dram shop, tippling house, or other place where intoxicating or malt liquors are sold or given away, for the purpose of there being supplied with any kind of liquor whatsoever. No person owning or having charge or control of any liquor saloon, dram shop or tippling house shall employ or procure, or cause to be employed or procured, any female person to wait or in any manner attend on any person in any dram shop, tippling house or liquor saloon, or in any place adjacent thereto or connected therewith, where intoxicating or malt liquors are sold or given away, nor shall any female person be or remain in any dram shop, tippling house, liquor saloon or place adjacent thereto or connected therewith, and wait or attend on any person, or solicit drinks in any such place."

For a violation of said laws the plaintiff in error was convicted in the city court of Denver. An appeal was taken to the county court, where a trial *de novo* was had, and this trial also resulted in a conviction. The proceeding was then carried to the supreme court of the state of Colorado, where, upon the authority of Adams et al. v. Cronin, 29 Colo., 484, the judgment of the county court was affirmed. (Cronin v. City of Denver, 29 Colo., 503.) The plaintiff in error now brings the action into this court by writ of error, and contends that the charter and ordinance are in conflict with the constitution and laws of the state of Colorado and the constitution of the United States.

ARGUMENT.

I.

THE LAWS IN QUESTION HAVE BEEN SUSTAINED BY THE SUPREME COURT OF THE STATE OF COLORADO, AND THIS EFFECTUALLY ANSWERS ANY ARGUMENT WHICH COUNSEL MAY MAKE, BASED UPON ANY ALLEGED INFRINGEMENT OF THE STATE LAWS OR STATE CONSTITUTION.

This doctrine requires neither argument nor citation of authority.

II.

THE CHARTER PROVISION AND THE ORDINANCE IN QUESTION ARE A VALID EXERCISE OF THE POLICE POWER OF THE STATE OF COLORADO AND ARE OBNOXIOUS TO NO FEDERAL LIMITATION.

This question we have discussed at some length in case No. 18624, entitled *Cronin v. Adams et al.*, now pending in this court. To repeat the argument there presented could serve no useful purpose. The two actions should have been consolidated, or, at least, ordered to be heard together. We shall content ourselves, therefore, by citing the authorities hereunder, to which reference was made in the Adams case. They are as follows:

Boston Beer Co. v. Mass., 97 U. S., 25.

Stone v. State of Miss., 101 U. S., 814.

New Orleans Gas Light Co. v. La. Light & Heat Producing & Mfg. Co., 115 U. S., 650.

Barbier v. Connelly, 113 U. S., 27.

Austin v. State of Tenn., 179 U. S., 343.

Holden v. Hardy, 169 U. S., 366.

L'Hote v. City of New Orleans, 177 U. S., 588.

L. & N. R. R. Co. v. Kentucky, 161 U. S., 677.

Camfield v. U. S., 167 U. S., 518.

Black on Intoxicating Liquors, sections 26, 37, 39 and 42.

Schwuchow v. City of Chicago, 68 Ill., 444.

Giozza v. Tiernan, 148 U. S., 655.

Bartemeyer v. Iowa, 18 Wallace, 129.

Thurlow v. Mass.; Fletcher v. Rhode Island; Pierce v. New Hampshire, known as The License Cases, 5 Howard, 504.

Mugler v. Kansas, 123 U. S., 623.

Crowley v. Christensen, 137 U. S., 86.

State v. Luddington, 33 Wis., 107.

Denver v. Domedian, 15 Colo. App., 36.

Foster v. Police Commissioners, 102 Cal., 491.

Ex parte Hays, 98 Cal., 556.

Bergman v. Cleveland, 39 Ohio St., 651.

Blair v. Kilpatrick, 40 Ind., 312.

State v. Reynolds, 14 Mont., 383.

State v. Considine, 16 Washington, 358.

In re Considine, 83 Fed., 157.

These cases show that the state, in its own discretion, may wipe the liquor traffic out entirely, within its boundaries, by prohibiting its sale to all, or that it may lessen the evil by designating those most likely to be injured by its use and prohibiting its sale to them.

III.

THE ALLEGED DISCRIMINATION AGAINST WOMEN, BY SAID LAWS, IS NOT A QUESTION THAT CAN BE RAISED BY THE PLAINTIFF.

If there is a discrimination of which the courts can take cognizance, this may be done only upon the complaint of a woman who has been affected thereby. It is a strange sort of incongruity for a saloon keeper, who is manifestly moved by greed and cupidity, to appear in a court of conscience under the guise of defending the rights of woman, when he shows that his real purpose is to do all in his power to debauch and debase her. Before a person can have any standing in court to test the validity of a statute on account of an alleged unlawful discrimination, he must show that he is the person against whom the discrimination is made.

Wagner v. The Town of Garrett, 118 Ind., 114.
Commonwealth v. Wright, 79 Kentucky, 22.
Marshall v. Donovan, 10 Bush., 681.
Smith v. McCarty, 56 Pa. St., 359.

The judgment of the supreme court of the state of Colorado should be affirmed.

Respectfully submitted,

HENRY A. LINDSLEY,
HALSTED L. RITTER,
CHARLES R. BROCK,
Attorneys for Defendant in Error.